IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1352 OF 2004

Narayan Piloba Mali & Ors. .. Appellants

Versus

Hari Piloba Mali .. Respondent

Mr.M.A.Utgikar for appellants

CORAM : P.V.KAKADE, J.

DATE : 5TH JULY, 2005.

P.C.:

1. This is an appeal preferred by the appellants against the judgment and order passed by Addl. District Judge, Pandharpur allowing the appeal and modifying the order passed by Joint Civil Judge, Junior Division, Pandharpur partly decreeing the suit for partition and separate possession of the shares.

2. I have heard the learned counsel for the appellants. Perused the record.

3. The plaintiff filed the suit for partition of the joint family property on the ground that the property was ancestral property and defendants were not giving him his shares and hence the suit came to be filed. The defendants resisted the suit on the ground that there were previous partitions amongst them about 30 to 35 years back and hence the suit was not liable. It was also contended that the suit was barred by law of limitation and on such and other grounds the suit was sought to be dismissed.

4. The learned trial judge adjudicated the dispute on merits and came to the conclusion that part of the suit properties were proved to be ancestral properties and defendants had failed to prove that there were partitions effected about 30 to 35 years back and suit property was allotted to defendants' share in that partition and as such the suit came to be decreed partly. The issue regarding limitation was also answered in the negative. The appeal was carried to the District Court, Pandharpur, who after hearing both the

parties came to the conclusion that the shares allotted by the lower court required modification and to that extend the appeal was allowed. Hence the present appeal.

5. At the outset it may be noted that there is no substantial question of law involved in this appeal. It must be held that it is a case of recording of concurrent findings. Perusal of judgments of both the courts below, shows that the learned appellate court judge has rightly modified the decree and allotted the shares to the respective parties including the plaintiff and defendants and therefore, it requires no interference.

6. It was urged on behalf of the appellants that there was a notice issued by plaintiff in the year 1965 making his intention clear for seeking partitions of the suit property. However, it is needless to mention that notice reflecting intention to partition would not amount to actual partition by meats and bounds and therefore, it cannot be said that there were partitions consequent to that notice of the year 1965. On that very basis it was also submitted that the suit was

barred by law of limitation. However, mere notice calling upon the defendants to effect partitions would not amount to exclusion of the party from the share. Article 110 of the Limitation Act would make it clear that the period of limitation is 12 years would start running when the exclusion of the concerned party becomes known to the plaintiff from partition and therefore, in the present case there is no question involved of law of limitation.

7. In view of this position, there is no doubt whatsoever that the lower appellate court has appreciated the available evidence in proper perspective, and therefore, there is no interference by this court. In the result the appeal stands dismissed.

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